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Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part 1, §§ 165, 1.165-8(c))

Rev. Proc. 2011-58

SECTION 1. PURPOSE

This revenue procedure modifies the definition of a qualified loss in section 4.02 of Rev. Proc. 2009-20, 2009-1 C.B. 749, to address certain situations in which the death of a lead figure (as described in section 4.01 of Rev. Proc. 2009-20) has foreclosed the possibility of criminal charges. This revenue procedure also makes a conforming modification to the definition of discovery year in section 4.04 of Rev. Proc. 2009-20.

SECTION 2. BACKGROUND

.01 Rev. Rul. 2009-9, 2009-1 C.B. 735, describes the proper income tax treatment for losses resulting from certain fraudulent investment arrangements, including so-called Ponzi schemes.

.02 Rev. Proc. 2009-20 provides an optional safe harbor allowing certain investors to claim a theft loss deduction under § 165 of the Internal Revenue

Code for qualified losses from certain fraudulent investment schemes. Under section 4.02 of Rev. Proc. 2009-20, a qualified loss is a loss from a specified fraudulent arrangement (defined in section 4.01) for which authorities have charged the lead figure by indictment, information, or criminal complaint with a crime that meets the definition of theft for purposes of § 165.

.03 Since publication of Rev. Proc. 2009-20, the deaths of some lead figures in Ponzi schemes have foreclosed authorities' ability to charge them with criminal theft. Qualified investors in these cases are unable to meet the definition of a qualified loss in section 4.02 of Rev. Proc. 2009-20 and therefore are precluded from using the optional safe harbor, solely because of the death of a lead figure. This revenue procedure expands the definition of qualified loss in Rev. Proc. 2009-20 to address these cases.

.04 This revenue procedure also clarifies that the terms "indictment," "information," and "criminal complaint" in section 4.02 of Rev. Proc. 2009-20 have meanings similar to the use of those terms in the Federal Rules of Criminal Procedure.

SECTION 3. SCOPE

This revenue procedure applies to qualified investors within the meaning of section 4.03 of Rev. Proc. 2009-20.

SECTION 4. APPLICATION

.01 Section 4.02 of Rev. Proc. 2009-20 is modified to read as follows:

.02 Qualified loss. A qualified loss is a loss resulting from a specified fraudulent arrangement in which, as a result of the conduct that caused the

loss—

(1) A lead figure was charged by indictment or information (see, for example, Fed. R. Crim. P. 7) under state or federal law with the commission of fraud, embezzlement, or a similar crime that, if proven, would meet the definition of theft for purposes of § 165 of the Internal Revenue Code and § 1.165-8(d) of the Income Tax Regulations under the law of the jurisdiction in which the theft occurred, and the indictment or information has not been withdrawn or dismissed (other than because of the death of the lead figure);

(2) A lead figure was the subject of a state or federal criminal complaint (see, for example, Fed. R. Crim. P. 3) alleging the commission of a crime described in section 4.02(1) of this revenue procedure, the complaint has not been withdrawn or dismissed (other than because of the death of the lead figure), and either--

(a) The complaint alleged an admission by the lead figure, or the execution of an affidavit by that person admitting the crime; or

(b) A receiver or trustee was appointed with respect to the arrangement or assets of the arrangement were frozen; or

(3) A lead figure, or an associated entity involved in the specified fraudulent arrangement, was the subject of one or more civil complaints (see, for example, Fed. R. Civ. P. 3, 7) or similar documents (such as a notice or order instituting administrative proceedings or other document the Internal Revenue Service designates) that a state or federal governmental entity filed with a court or in an administrative agency enforcement proceeding, and—

(a) The civil complaint or similar documents together allege facts that comprise substantially all of the elements of a specified fraudulent arrangement, as described in section 4.01 of this revenue procedure, conducted by the lead figure;

(b) The death of the lead figure precludes a charge by indictment, information, or criminal complaint against that lead figure as described in section 4.02(1) or (2) of this revenue procedure; and

(c) A receiver or trustee was appointed with respect to the arrangement or assets of the arrangement were frozen.

.02 Section 4.04 of Rev. Proc. 2009-20 is modified to read as follows:

.04 Discovery year. A qualified investor's discovery year is the investor's taxable year in which--

(1) The indictment, information, or complaint described in section 4.02(1) or (2) of this revenue procedure is filed; or

(2) The complaint or similar document described in section 4.02(3) of this revenue procedure is filed, or the death of the lead figure occurs, whichever is later.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to losses for which the discovery year is a taxable year beginning after December 31, 2007.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009-20 is modified.

DRAFTING INFORMATION

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